

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 878 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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TALUKA PANCHAYAT THRO'TALUKA DEVELOPMENT

Versus

PATEL BHIKHABHAI KESHALAL

Appearance:

MR SUNIL K SHAH for Petitioner No. 1-3
MR NC NAYAK for Respondent No. 1-5
MS JYOTSNA M PARMAR for Respondent No. 1-5
RULE SERVED for Respondent No. 6

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 11/09/2002

ORAL JUDGEMENT

The present Civil Revision Application is filed against the order passed in application below Exh. 1 in Civil Misc.Application No. 19/2001 on 27.2.2002 by the learned Joint Civil Judge, Mehsana whereby the application filed by the present petitioners for condonation of delay in filing the Civil Appeal was

rejected. While rejecting the Civil Appeal the learned Judge has observed that the applicants have shown false ground of illness of advocate. It was further observed that the concerned advocate has forwarded the certified copy along with the covering letter, however the said letter was not produced before the learned Judge. It is stated in this application that the Regular Civil Suit No. 124/84 was decided on 28.1.2000. The certified copy of the judgment and decree was applied on 4.2.2000 and it was ready on 9.2.2000. It was further stated that the applicant's advocate namely Shri Ashokbhai Gupta was ill and therefore the petitioners could not prefer the appeal for want of necessary information. It is further stated that the certified copy was received on 16.8.2000, however the term of the Taluka Panchayat was over and from 13.7.2000 to 12.10.2000. Administrator was administering the Panchayat and there was no formation of taluka Panchayat and therefore no action for filing the appeal was taken. It was further stated that on 12.10.2000 the President was elected and after considering all the facts the petitioners have obtained the advice of their advocate and thereafter a resolution was passed in the executive committee on 30.1.2001 and the appeal was filed along with delay condonation application on 8.2.2001.

2. Since the applicants are statutory bodies, there was some delay in taking necessary action in the matter, however they should not have been non-suited on the ground of delay and the court below should have condoned the delay after awarding some cost in the matter. Since this was not done, this court has found sufficient force in the argument canvassed by Mr. Sunil K. Shah, the ld. advocate appearing for the applicant-revisionist and while exercising the revisional powers under Sec. 115 of the CPC, this Court inclines to interfere with the said order. This Court is, therefore, of the view that the impugned order is required to be quashed and set aside and the learned 2nd Joint District Judge, Mehsana is hereby directed to decide the appeal on merits. However, as the delay is of 11 months and 1 day, the petitioners are directed to deposit a sum of Rs. 1,000/= in the Court of learned 2nd Joint District Judge, Mehsana, within one month from today towards the cost of that delay, and after the said amount is deposited, the learned Judge shall proceed with the hearing of the Regular Civil Appeal.

3. Rule is made absolute accordingly to the aforesaid extent.

rmr. [K.A. Puj, J.]